

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Aaron Cole	Team: Squad #14	CCRB Case #: 201704122	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/18/2017 5:00 PM	Location of Incident: Northeast corner of Gunther and Allerton Avenue	Precinct: 49	18 Mo. SOL 11/18/2018	EO SOL 11/18/2018	
Date/Time CV Reported Thu, 05/25/2017 10:06 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/25/2017 10:06 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rainard Wroten	12955	957295	049 PCT
2. POF Namely Holguin	21732	959698	049 PCT
3. POM Joshua Marte	04923	951971	049 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Noonan	04259	943616	049 PCT
2. POM Jameson Masker	21444	945236	049 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rainard Wroten	Abuse: Police Officer Rainard Wroten frisked § 87(2)(b)	
B.POM Joshua Marte	Discourtesy: Police Officer Joshua Marte spoke discourteously to § 87(2)(b)	
C.POM Joshua Marte	Abuse: Police Officer Joshua Marte frisked § 87(2)(b)	
D.POM Joshua Marte	Abuse: Police Officer Joshua Marte searched § 87(2)(b)	
E.POM Joshua Marte	Abuse: Police Officer Joshua Marte searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POF Namely Holguin	Discourtesy: Police Officer Namely Holguin spoke discourteously to § 87(2)(b)	
G.POF Namely Holguin	Off. Language: Police Officer Namely Holguin made remarks to § 87(2)(b) based upon race.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 25, 2017, § 87(2)(b) called the CCRB and filed this complaint.

At approximately 5:00 p.m. on May 18, 2017, at the Northeast corner of Gunther Avenue and Allerton Avenue in the Bronx, PO Rainard Wroten and PO Namely Holguin of the 49th Precinct stopped § 87(2)(b) vehicle for driving through a stop sign. Present in § 87(2)(b) car were her children's father, § 87(2)(b) who was seated in the front passenger seat, and her four young children, who were seated in the backseat. PO Holguin told § 87(2)(b) she was under arrest for driving with a suspended license and handcuffed her. The investigation determined that PO Wroten ordered § 87(2)(b) out of the car and frisked him (**Allegation A**).

PO Joshua Marte, PO Kevin Noonan, and PO Jameson Masker of the 49th Precinct Anti-Cime team arrived. PO Marte approached § 87(2)(b) and allegedly told him, "Now don't treat me like no bitch" (**Allegation B**). PO Marte ordered § 87(2)(b) to raise his arms and § 87(2)(b) complied. § 87(2)(b) lowered his arms momentarily and PO Marte allegedly said "Put your fucking hands back up" (within **Allegation B**). PO Marte allegedly frisked and searched § 87(2)(b) (**Allegation C, Allegation D**) and discovered less than one gram of marijuana in his pocket, but PO Marte did not confiscate the marijuana. PO Marte conducted a warrant search for § 87(2)(b). An officer allegedly entered § 87(2)(b) car and searched the glove compartment and center console (**Allegation E**).

§ 87(2)(b) was escorted to PO Wroten's and PO Holguin's patrol car. § 87(2)(b) approached the patrol car and PO Holguin allegedly said "Motherfucking nigger, didn't I tell you to get your ass back in the car?" (**Allegation F, Allegation G**). § 87(2)(b) returned to his car and the officers left the scene. § 87(2)(g), § 87(4-b)

§ 87(2)(b) was charged with § 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

There is no video evidence in this case.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not mediation suitable.
- As of September 26, 2017, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the New York City Comptroller's Office regarding this incident (Board Review 01).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and the second CCRB complaint involving § 87(2)(b) (Board Review 03, Board Review 04). § 87(2)(b).
 - This is the first CCRB complaint filed against both, PO Wroten, a three-year-member-of-service, and PO Holguin, a one-year-member-of-service.
 - PO Marte has been a member-of-service for five years and has had two additional CCRB complaints filed against him comprising a total of eight allegations. In case #201508770, one frisk allegation was substantiated. The Board recommended and the NYPD issued formalized training. One search of a person allegation was unsubstantiated. § 87(2)(g), § 87(4-b).
- § 87(2)(b) In case #201508829, one vehicle search allegation and one vehicle stop allegation were both truncated. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

It is undisputed that PO Wroten and PO Holguin were the uniformed officers who initiated the vehicle stop, and that PO Marte, PO Noonan, and PO Masker were the plainclothed officers who subsequently arrived. § 87(2)(b) and § 87(2)(b) alleged that the Hispanic male officer in plainclothes who conducted the warrant search for § 87(2)(b) was the officer who spoke discourteously, frisked and searched § 87(2)(b) and searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (Board Review 08, Board Review 09). PO Marte was the only Hispanic male officer present and on June 16, 2017, an IAB document request revealed that PO Marte was the officer who conducted the warrant search for § 87(2)(b) (Board Review 10).

§ 87(2)(g)

Although not alleged by either civilian, PO Wroten acknowledged frisking § 87(2)(b) prior to the arrival of the three plainclothes officers (Board Review 12). On June 1, 2017, an IAB document request revealed that PO Wroten conducted a warrant search for § 87(2)(b) but not § 87(2)(b) (Board Review 11). § 87(2)(b) only alleged being frisked once, by the officer who conducted his warrant search. Following PO Wroten's CCRB interview, attempts to contact § 87(2)(b) were made to follow up on this additional alleged frisk, but § 87(2)(b) was unresponsive to these attempts (see IA's for contact attempts). § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) both alleged that after § 87(2)(b) was inside the patrol car, the sole female officer present exited the patrol car and spoke discourteously and offensively to § 87(2)(b). Despite her denial of having done so, PO Holguin was the only female officer present during the incident. § 87(2)(g)

Allegations not pled

- § 87(2)(g) [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Allegation A –Abuse of Authority: Police Officer Rainard Wroten frisked § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both denied that § 87(2)(b) consumed any alcohol prior to or during this incident, although they both acknowledged that § 87(2)(b) was in possession of a Styrofoam cup containing liquor, which he held in his hand during the vehicle stop. Despite having alcohol in his possession at the time, § 87(2)(b) was sure he had not begun drinking prior to the incident because he was waiting to arrive at Chuck E. Cheese to do so, so that “[his] kids could do what they do, and [he could] do what [he’s] doing.” § 87(2)(b) acknowledged that he was in possession of marijuana, but said that the vehicle did not smell of marijuana, and that nothing had been smoked inside of the vehicle that day.

PO Wroten said that when he informed § 87(2)(b) that § 87(2)(b) was under arrest, he smelled alcohol on § 87(2)(b)’s breath. PO Wroten asked § 87(2)(b) if he had been drinking, § 87(2)(b) said yes, and PO Wroten ordered him to step out of the vehicle with the intent of frisking him. PO Wroten did not suspect § 87(2)(b) of committing any crimes, did not observe any suspicious bulges on his person, and did not believe that § 87(2)(b) possessed a weapon or that a weapon was present inside the vehicle. PO Wroten said he never smelled marijuana at the scene and denied that marijuana was recovered from § 87(2)(b) during this incident.

Prior to frisking § 87(2)(b) PO Wroten said he observed a rectangular bulge in § 87(2)(b)’s pocket when § 87(2)(b) exited the vehicle, which PO Wroten believed to be a wallet. PO Wroten said he then patted down § 87(2)(b)’s waist area and pockets.

PO Holguin denied that § 87(2)(b) was frisked during this incident (Board Review 14). She never suspected § 87(2)(b) of possessing a weapon or that one was present inside the civilian’s vehicle. However, immediately after PO Holguin handcuffed § 87(2)(b) PO Wroten walked to the opposite side of the vehicle, where he remained for approximately 30 seconds. PO Holguin acknowledged that she did not know what occurred between PO Wroten and § 87(2)(b) during this time. PO Marte, PO Noonan and PO Masker all arrived after this aspect of the incident.

A frisk requires reasonable suspicion that a person is armed. People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 15).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED].

Allegation B-Discourtesy: Police Officer Joshua Marte spoke discourteously to § 87(2)(b)

Allegation C-Abuse: Police Officer Joshua Marte frisked § 87(2)(b)

Allegation D-Abuse: Police Officer Joshua Marte searched § 87(2)(b)

§ 87(2)(b) alleged that as PO Wroten, PO Holguin and § 87(2)(b) stood at the driver's side of the vehicle and PO Marte, PO Noonan and PO Masker arrived and approached the passenger side, PO Marte told § 87(2)(b) "Don't treat me like no bitch" and ordered him to exit the vehicle and place his palms against the car. PO Marte allegedly patted down § 87(2)(b)'s thighs, hips, buttocks, and groin, then lifted his shirt and visually inspected his stomach. At one point, § 87(2)(b) dropped his hands and PO Marte allegedly said "Put your fucking hands back up." PO Marte allegedly reached his hands inside of § 87(2)(b)'s pockets and removed one baggie containing less than one gram of marijuana.

§ 87(2)(b) said that after PO Holguin told her that she was under arrest, § 87(2)(b) exited the vehicle and stood on the rear driver's side as PO Holguin searched her incident to arrest. From this vantage point, § 87(2)(b) observed two plainclothed officers approach the passenger's side of the vehicle and speak with § 87(2)(b). § 87(2)(b) did not hear what was said between § 87(2)(b) and the officers, except that an officer ordered § 87(2)(b) to exit the vehicle. § 87(2)(b) did not hear any officer say "Don't treat me like no bitch," and she did not observe any officer frisk or search § 87(2)(b). After the incident, § 87(2)(b) told § 87(2)(b) that one of the officers had found a bag of marijuana on his person.

PO Marte said § 87(2)(b) exited the vehicle without being ordered to do so and that PO Marte remained approximately five to ten feet from § 87(2)(b) throughout the incident (Board Review 17). PO Marte never spoke to § 87(2)(b) and did not observe any officer do so. PO Marte denied making either of the alleged discourteous statements and denied frisking and searching § 87(2)(b).

PO Wroten and PO Holguin said that they observed one of the plainclothed officers speaking with § 87(2)(b) but could not identify which officer. PO Noonan denied interacting with § 87(2)(b) and did not know if PO Marte or PO Masker did. PO Masker denied that § 87(2)(b) ever exited the vehicle and that any Anti-Crime officer interacted with him. Every officer interviewed denied that any officer told § 87(2)(b) "Don't treat me like no bitch," frisked § 87(2)(b) or told him to "Put [his] fucking hands up," and searched § 87(2)(b) (Board Review 18, Board Review 19).

§ 87(2)(g)
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Allegation E-Abuse: Police Officer Joshua Marte searched the vehicle in which § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) alleged that as she was being searched by PO Holguin, she observed PO Marte lean through the passenger side door of the vehicle and touch unspecified objects inside of the center console, which she said had been open prior to the vehicle stop. § 87(2)(b) said that as he stood

at the rear of the vehicle, he saw PO Marte lean through the passenger side door and open the center console and glove compartment, and touch unspecified objects inside those compartments.

PO Marte said he paced back and forth alongside the vehicle during this aspect of the incident. He denied entering and searching the vehicle. PO Marte did not feel at the time that there was any reason for the vehicle to be entered or searched and he denied seeing any officer do either of these things.

PO Wroten said that as he stood in front of his patrol car, located two or three car lengths behind § 87(2)(b) vehicle, he saw through § 87(2)(b) rear window that PO Holguin had leaned through the open passenger side door, where she remained for approximately one to three minutes. PO Wroten believed that PO Holguin was allowed to search the vehicle because § 87(2)(b) § 87(2)(b)'s breath smelled of alcohol. PO Wroten denied that PO Holguin searched inside the center console or glove compartment.

PO Holguin denied that she or any other officer entered and searched the vehicle, and PO Noonan and PO Masker said they were unaware of any officer doing so.

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Allegation F-Discourtesy: Police Officer Namely Holguin spoke discourteously to § 87(2)(b)

Allegation G-Offensive Language: Police Officer Namely Holguin made remarks to § 87(2)(b) based upon race.

Both § 87(2)(b) and § 87(2)(b) said that as § 87(2)(b) sat handcuffed in the backseat of the patrol car, § 87(2)(b) approached PO Holguin, who sat in the front seat of the patrol car, and asked for the registration and proof of insurance for the civilians' vehicle to be returned to him. In response, PO Holguin exited the patrol car, grasped § 87(2)(b)'s wrist, and ordered him to return to his car. § 87(2)(b) alleged that PO Holguin said, "Motherfucking nigger, didn't I tell your motherfucking ass I ain't giving you shit?" § 87(2)(b) alleged that PO Holguin's exact words were, "Nigger, get your fucking ass back in the car."

PO Holguin confirmed that § 87(2)(b) approached the patrol car and said he began to scream. PO Holguin said she thought to herself, "Get back in the vehicle. I don't want to talk to you," but she denied that she exited the patrol car and denied using any profanity or offensive language during this incident. She added that the word "nigger" is not "part of [her] vocabulary." Every other officer interviewed denied hearing PO Holguin make any of the alleged statements.

§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(g), § 87(4-b) [Redacted]
[Redacted]
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[Redacted]

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date